

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 89583.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where a mining claim was located in April 1981, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1982, a notice of intention to hold the claim or evidence of assessment work performed on the claim during 1982, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instrument within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

APPEARANCES: John Milner, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John Milner appeals the decision of the California State Office, Bureau of Land Management (BLM), dated August 11, 1983, which declared the unpatented Placerville placer mining claim, CA MC 89583, abandoned and void because no notice of intention to hold the claim or evidence of assessment work was filed with BLM in 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claim was located April 22, 1981, and was recorded with BLM June 8, 1981. The claim is situated in secs. 10 and 11, T. 2 N., R. 1 E., San Bernardino meridian, San Bernardino County, California.

With his appeal, appellant filed a copy of his 1982 proof of labor, as recorded in San Bernardino County, California, October 26, 1982. He asserted a copy of the recorded proof of labor was mailed to BLM October 26, 1982,

and submitted statements of two persons who assert they saw Milner make the alleged mailing to BLM.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982); see Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claim herein was located April 22, 1981, a proof of labor or notice of intention to hold the claim was required to be recorded both in the records of San Bernardino County, California, and with the proper office of BLM prior to December 31, 1982. As no filing was shown to have been made with BLM, the claim was properly deemed to be abandoned.

Although appellant states the proof of labor was promptly mailed to BLM after recordation in the county, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if the failure to make a timely filing of the instrument was caused by action of the Postal Service, that fact would not excuse claimant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is received and date stamped by BLM.

BLM has stated that it did not receive the 1982 proof of labor. Appellant has shown nothing to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the mining claim abandoned and void under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

-----  
Douglas E. Henriques  
Administrative Judge

We concur:

\_\_\_\_\_  
Gail M. Frazier  
Administrative Judge

\_\_\_\_\_  
Will A. Irwin  
Administrative Judge

